could recover damages. *McClary* v. *Babcock* (1907), — Ind. —, 82 N. E. Rep. 453, decided that all roads might be put on the same footing by statute. In *South Eastern, etc. Co.* v. *Evansville, etc. Co.* (1907), — Ind. —, 82 N. E. Rep. 765, it was held that the interurban line had the right to cross the steam railway on a street or road, as either could be put to all proper uses, and the interurban car was such a use. WATSON, J., in the principal case was careful to limit the doctrine to the facts presented. The right of an abutting landowner to recover damages for injury to his property by the construction or operation of an interurban line, he held to be another question, and an open one in that state.

MUNICIPAL CORPORATIONS—SPECIAL ASSESSMENTS ON STREET RAILWAYS.—Under a statute providing for the levy of assessments for street improvements upon the "lots, blocks, tracts and parcels of land" specially benefitted, commissioners of the city of Seattle assessed the "right of way and trackage" of the Seattle Electric Company. *Held,* (ROOT, J., dissenting), that the street car company had no interest in the street answering the description of "lots, blocks, tracts and parcels" since the fee was in the abutting owners and the company had a mere easement. *City of Seattle* v. *Seattle Electric Company* (1908), — Wash. —, 94 Pac. Rep. 194.

The question involved is not free from doubt. Various statutes, charters and ordinances, differing one from another, add to the uncertainty. Street railways have been held liable or made so by ordinance in the following cases: *North Beach R. Co.'s Appeal,* 32 Cal. 500; *New Haven* v. *Fair Haven, etc. Co.,* 38 Conn. 422; *Chicago* v. *Baer,* 41 Ill. 306; *Kuehner* v. *Freeport,* 143 Ill. 92; *Lightner* v. *Peoria,* 150 Ill. 80; *Shreveport* v. *Prescott,* 51 La. Ann. 1895. On the other hand it has been held that they are not liable for such assessments, nor can they be made so. *Boehme* v. *Monroe,* 106 Mich. 401; *People ex rel. Davidson* v. *Gillon,* 126 N. Y. 147; *New York* v. *Eighth Ave. R. Co.,* 7 App. Div. 84, 39 N. Y. Supp. 959; *Davis* v. *Newark,* 54 N. J. L. 144; *Philadelphia* v. *Philadelphia, etc.,* Co., 177 Pa. 379. As a general rule such companies may be required to pave between the tracks or for a reasonable distance outside of them, and they may be assessed when the city is forced to do the work. *State, etc.* v. *Hoboken,* 14 N. J. L. 71; *New York* v. *Second Ave. Co.,* 102 N. Y. 572; *Harrisburg* v. *Harrisburg Pass. Co.,* 1 Pearson (Pa.) 298. By charter or contract this duty may be extended even to the extent of having to pave the whole street. *Philadelphia* v. *Thirteenth, etc. Co.,* 169 Pa. 269; *Brick, etc. Co.* v. *Hull,* 49 Mo. App. 433. When paving is done as required by the charter or a contract it is in lieu of a special assessment. *West Chicago R. Co.* v. *Chicago,* 178 Ill. 339. Where the statutes only authorize assessments on "lands," "buildings," "houses," "lots," "blocks," or "parcels," the general rule relieves the street railway from any burden. This is especially true where the company does not own the fee in the street, but has only an easement. *Koons* v. *Lucas,* 52 Ia. 177; *State* v. *County Dist. Co.,* 31 Minn. 354; *People ex rel. Davidson* v. *Gillon* (supra); *Oshkosh City R. Co.* v. *Winnebago County,* 89 Wis. 435. Opposed to this view is the dictum in *Storrie* v. *Houston Co.,* 92 Tex. 129, and the cases of *New Haven* v. *Fair Haven, etc.,*

Co. (supra); *Kuehner* v. *Freeport* (supra), where the statute used the word "property;" and *Chicago* v. *Baer* (supra), where the word was "real estate." See the note to 46 L. R. A. 193. The principal case is of interest in view of the recent decisions in *Northern Pac. R. Co.* v. *City of Seattle* (1907), — Wash. —, 91 Pac. Rep. 244, where a steam railroad company was held liable on an assessment for improving a street along its right of way. For a discussion of the case and the conflict with regard to such railways, see 6 MICH. LAW REV. 153. The court distinguishes the two cases on the ground that in the former the right of way abutted on the street and was private property, while in the principal case it was no part of the street and was only an easement granted for a limited time.

PUBLIC OFFICERS—OFFICER DE FACTO—UNCONSTITUTIONAL STATUTE.—The constitution provided for the office of district judge. The legislature had the power to fix and change the districts. The legislature created a new district. The governor, thinking that the law creating the new district went into effect upon a certain date, appointed a judge who entered upon the duties. Later it was held that the law did not go into effect until several months after this judge had been appointed and had begun acting as such. At a term of court held during this interval, the petitioner was tried and convicted upon a criminal charge and sentenced to imprisonment. He applies for release upon *habeas corpus,* contending that the proceeding was a nullity. *Held,* that the judge was a *de facto* officer, whose acts as respects third persons and the public were valid, and that the writ should be denied. *State* v. *Ely* (1907), — N. Dak. —, 113 N. W. Rep. 711.

It was contended by the petitioner that, during the interval before the law took effect, there was no such office as that of judge of the new district, and that there could not be a *de facto* officer unless there was a *de jure* office. *Norton* v. *Shelby County,* 118 U. S. 425. But the court held that, as the constitution created the office of district judge, there was such an office, and that the defective legislation went only to the manner of filling it. Where there is an office the officer may be such *de facto* though he be elected or appointed in pursuance of an unconstitutional statute. *State* v. *Carroll,* 38 Conn. 449, 9 Am. Rep. 409. The question is analogous to that discussed in *Lang* v. *Mayor,* 6 MICH. LAW REV., 354, where some of the most recent cases are cited.

SALES—STANDING TIMBER.—Plaintiff by a contract in writing conveyed to Kramer "all timber lying and standing" on two certain parcels of land, with the right of egress and regress over the land for the purpose of cutting, manufacturing, and removing the material. The contract also provided that the "privilege of five years' time is hereby granted for the completion of said operation." Defendants claim as assignees of Kramer. All of the timber was severed from the soil within the agreed time and the purchase price was paid in full. Not only was the timber severed, but defendants had caused it to be manufactured into poles, ties, etc., prior to that date. Plaintiff now claims title to the same on the ground, that defendants having failed to